

REMARKS

Claims 1-70 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 103(a) Rejection:

The Examiner rejected claims 1-4, 6-19, 21-40, 42-48 and 50-70 under 35 U.S.C. § 103(a) as being unpatentable over Borella et al. (U.S. Patent 6,269,099) (hereinafter “Borella”) in view of Teodosiu et al. (U.S. Publication 2002/0062375) (hereinafter “Teodosiu”). Applicants respectfully traverse this rejection for at least the reasons presented below.

First of all, the rejection is improper because, as noted in Applicants’ previous responses, **Teodosiu does not qualify as a prior art reference.** More specifically, Teodosiu is a published U.S. patent application that was filed on Sep. 13, 2001, after Applicant’s priority date of April 24, 2001. Teodosiu does claim the benefit of two provisional applications both filed Nov. 22, 2000. However, the Nov. 22, 2000 filing date can only be used as Teodosiu’s 35 U.S.C. § 103(a) prior art date for the subject matter that is common to both the published application and one of Teodosiu’s provisional applications. Since it is common practice for a later filed utility application to include more or different subject matter than its earlier provisional application, the Examiner cannot assume that the material in Teodosiu’s published application relied upon by the Examiner was actually present in either of Teodosiu’s provisional applications. **In fact, examination of Teodosiu’s two provisional applications shows that they vary greatly from Teodosiu’s published utility application.** The subject matter on which the Examiner is relying on to reject Applicant’s claims does not appear to be entirely present in one of Teodosiu’s provisional applications. Thus, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

Moreover, Teodosiu's published application is not entitled to the Nov. 22, 2000 date as a section 103(a) prior art date unless at least one claim of Teodosiu's published application is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), a published utility application is not entitled to its provisional application's filing date as a prior art date unless at least one claim of the published utility application is supported (per 35 U.S.C. § 112) in the provisional application. Since both of Teodosiu's provisional applications are much shorter informal papers as compared to Teodosiu's utility application, it is not at all clear that either one of Teodosiu's provisional applications provide full 35 U.S.C. § 112 support for any of the claims of Teodosiu's published utility application. Thus, the rejection is further improper because Teodosiu's published application does not appear to have the necessary claim support in either provisional application to be entitled to the provisional application's filing date as its prior art date. *See also* M.P.E.P. § 2136.03(III-IV).

In an earlier Action, the Examiner stated that "the provisional application of Teodosiu teaches the step of accessing the information about the peer group name server and using the information in accessing the peer group name server." **However, the Examiner failed to cite any portion of Teodosiu's provisional application as support.** The Examiner did not even identify which of Teodosiu's two provisional applications the Examiner was referring to. In response to the Examiner statement that "applicant does not provide any details for proving Teodosiu's provisional application does not teach the limitation in the application", **it is up to the Examiner to cite support for a *prima facie* rejection.** *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). As noted above, the Examiner has failed to do so. Applicants assert that neither of Teodosiu's provisional applications include **all** the subject matter from Teodosiu's published application that the Examiner is using in the rejection. Moreover, Neither of Teodosiu's provisional applications provide full § 112 support for any of the claims of Teodosiu's provisional applications.

In the Response to Arguments section of the present Office Action, the Examiner states, "Applicant's arguments with respect to claims 1-70 have been considered but are

moot in view of the new ground of rejection.” However, the new ground of rejection specifically applies the Teodosiu reference to additional ones of Applicants’ claims. Applicants fail to see how applying the Teodosiu reference to additional (including independent) claims renders moot Applicants’ arguments regarding Teodosiu’s failure to qualify as prior art.

Furthermore, the Examiner has still failed to demonstrate that Teodosiu’s teachings used in the rejection are common to both Teodosiu’s published application and provisional application, and that at least one claim of Teodosiu’s published application is supported (under 35 U.S.C. § 112) in the provisional application.

Furthermore, regarding claim 1, Borella in view of Teodosiu fails to teach or suggest a peer group name server receiving information about a peer group, wherein the peer group comprises one or more peers as member peers of the peer group, wherein the one or more peers reside on one or more network nodes coupled to the network and wherein the information about the peer group stored on the peer group name server is accessible to entities on the network through the peer group name server to discover the peer group.

Borella teaches that a network device, such as Borella’s edge router 16 may insert a special peer discovery marker in the header of an otherwise normal network message. Another network device, such as Borella’s edge router 20 retrieves the marker from the network message before sending the network message on to its destination. The information in Borella’s peer discovery marker includes address information identifying the network device that inserted the discovery marker in the network message. The receiving network device then opens a separate communication with the sending network device in order to send its own address information. Thus, the two network devices can communicate separately, such as to enable the two devices to “exchange and negotiate ‘intelligent’ edge router capabilities such as error correction, encryption, compression and other transmission parameters” (Borella, column 7, line 36-column 8, line 12 and column 10, lines 25-33).

Teodosiu teaches a resource naming service (RNS) that receives peer resource requests from peer platforms through a networking environment. However, Borella and Teodosiu (even if Teodosiu were valid prior art) do not teach or suggest wherein the information about the peer group stored on the peer group name server is accessible to entities on the network through the peer group name server to discover the peer group, as recited in claim 1.

The Examiner refers to Borella's network device being able to discover its peer by using a peer discovery protocol, citing figures 8A-B and column 7, line 37 – column 8, line 12. Borella teaches a system and method for peer network device discovery but Borella, even when combined with Teodosiu, fails to teach or suggest that the information (i.e. the marker information) sent from one peer to another is accessible to entities on the network *through the peer group name server* to discover the peer group. In contrast, Borella's edge routers only send out information about themselves. Borella's edge routers do not make information received via Borella's peer discovery protocol regarding another device available to other devices. Thus, none of Borella's edge routers can be considered a peer group name server. For example, in order to anticipate Applicant's claims, Borella's edge router 20 would have to make the address information regarding edge router 16 accessible to other entities on the network, which does not occur in Borella's system. In fact, Borella fails to mention anything about a first peer network device providing discovery information about second peer network device available to a third peer network device, as would be required if Borella were to anticipate Applicants' claim.

Teodosiu does not overcome the deficiencies of Borella regarding information about a peer group stored on the peer group name server being accessible to entities on the network through the peer group name to discover the peer group. The Examiner's combination of Borella and Teodosiu clearly fails to teach or suggest a peer group name server receiving information about a peer group, wherein the information about the peer

group stored on the peer group name server is accessible to entities on the network through the peer group name server to discover the peer group.

Additionally, **the teaching of Borella on which the Examiner relies does not support the Examiner's argument.** As noted above, Borella's peer discovery protocol allows an edge router to include a peer discovery marker into a TCP message. Another edge router responds to the discovery marker with its network address and a network address of an associated host device. Thus, Borella's peer discovery protocol allows peer devices (edge routers) to exchange network addresses directly. **However, Borella's peer discovery protocol clearly does not involve information about a peer group that is stored on a peer group name server being accessible to entities on the network through the peer group name server to discover the peer group.**

Borella's edge router stores a peer's network address in a "peer discovery table" that is used by the edge router when sending messages to other edge routers. The information in a particular edge router's peer discovery table is not accessible to other entities on the network and **is clearly not accessible through a peer group name server**, as would be required were the Examiner's interpretation correct, which it clearly isn't.

Furthermore, the Examiner has failed to provide a proper motivation to combine Borella and Teodosiu. The Examiner simply states that it would have been obvious "to replace Borella's peer group name device with Teodosiu's peer group name server because doing so would improve the functionality of the system." The Examiner's stated motivation is nothing more than improper hindsight analysis. In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular ... Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'." *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the

combination. A simple statement of the Examiner's belief that combining Teodosiu and Borella would "improve the functionality of the system" is clearly not a "showing of a suggestion, teaching, or motivation to combine" the references.

The Examiner has failed to provide a *prima facie* obviousness rejection of claim 1. As noted in the M.P.E.P. at §2143, to establish a *prima facie* case of obvious, three basic criteria must be met. Firstly, there must be some suggestion or motivation to combine the references. As noted above, the Examiner has failed to provide such a suggestion or motivation. Secondly, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. As noted above, Borella in view of Teodosiu fails to teach or suggest wherein the **information about the peer group stored on the peer group name server is accessible to entities on the network through the peer group name server to discover the peer group.**

Thus, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks apply to claims 11, 37, 44, 61 and 65.

In further regard to claims 11 and 44, Borella in view of Teodosiu does not teach or suggest discovering the peer group **from the information about the peer group on the peer group name server.** The Examiner does not cite any passage that describes discovering a peer group from information about the peer group on a peer group name server. As noted above, Borella, even if combined with Teodosiu, does not teach where information about a peer group is stored on a peer group name server is accessible *to discover the peer group*. Additionally, the Examiner's combination of Borella and Teodosiu does not teach or suggest *discovering a peer group* from the information *about the peer group on the peer group name server*. Instead, as noted above, Borella teaches a system in which individual pairs of peers (edge routers) discover each other (via headers inserted into network messages), but Borella does not teach discovering a peer group from the information about the peer group on the peer group name server. In order to teach Applicant's claims, a peer device in Borella's system would have to use the information stored on another peer device (the marker information received in a network

message) to discover a peer group. However, as noted above, Borella's edge routers do not make the information they receive in the header markers of network messages accessible to other entities.

The Examiner cites 8A-B and column 7, line 37 – column 8, line 12 of Borella. **However, the teaching of Borella on which the Examiner relies does not support the Examiner's argument.** Borella's peer discovery protocol allows an edge router to include a peer discovery marker into a TCP message. Another edge router responds to the discovery marker with its network address and a network address of an associated host device. Thus, Borella's peer discovery protocol allows peer devices (edge routers) to exchange network address directly. However, Borella's peer discovery protocol, even when combined with Teodosiu, does not involve information about a peer group on a peer group name server from which the peer group is discovered.

Regarding claim 31, Borella in view of Teodosiu fails to teach or suggest a first peer in the peer-to-peer network accessing a peer group name server in the peer-to-peer network, wherein the peer group name server comprises information about one or more entities in the peer-to-peer network, wherein the information comprises, for each of the one or more entities, a symbolic name and an associated entity identity of the entity. As noted in Applicants' previous response, the Examiner does not provide a proper rejection of claim 31. **Instead, the Examiner merely rejects claim 31 "for the same basis" as claim 1. However, claim 1 does not recite the same limitations as claim 31. Therefore, the Examiner has failed to state a *prima facie* rejection of claim 31.**

As described above, Borella teaches that a network device, such as Borella's edge router 16 may insert a special peer discovery marker in the header of an otherwise normal network message. Another network device, such as Borella's edge router 20 retrieves the marker from the network message before sending the network message on to its destination. The information in Borella's peer discovery marker including address information identifying the network device that inserted the discovery marker in the network message. The receiving network device then opens a separate communication

with the sending network device in order to send its own address information. Thus, the two network devices can communicate separately, such as to enable the two devices to “exchange and negotiate ‘intelligent’ edge router capabilities such as error correction, encryption, compression and other transmission parameters” (Borella, column 7, line 36-column 8, line 12 and column 10, lines 25-33). However, Borella, even when combined with Teodosiu, does not teach anything regarding a peer group name server including information about entities on a peer-to-peer network, where the information includes a symbolic name for each of the entities, as recited in claim 31. Instead, Borella teaches storing only the network address of peer devices (Borella, FIG. 3B and column 6, lines 51-60).

The Examiner equates the unique number of Borella’s peer discovery marker to the symbolic name of Applicants’ claim and refers to the fact that “Borella pointed out that the field value is not limited as described in the patent”, citing column 6, lines 34 – 50 and column 8, lines 9-12. However, the general statement that Borella’s system “is not limited to using the peer discovery marker 46 as a TCP 38 option and other types of peer discovery data packets could also be used” has nothing to do with a peer group name server including information about entities on a peer-to-peer network, where the information includes a symbolic name for each of the entities, as recited in Applicants’ claim. Borella clearly teaches that the unique number on which the Examiner relies is part of the peer discovery marker 46 that is added to data packets sent from an edge router desiring to discover other peers (column 7, lines 35-67). Borella does not teach anything regarding his peer discovery marker (including the unique number which the Examiner equates to a symbolic name) being information included on a peer group name server. In contrast, Borella specifically teaches that the peer discovery marker is inserted into header fields of TCP/IP packets.

Moreover, a unique number described by Borella as a 1-byte field cannot be considered a symbolic name, as the Examiner contends. The Examiner relies upon a general statement of Borella’s that Borella’s invention “is not limited to using the peer discovery marker 46 as a TCP 38 option and other types of peer discovery data packets

could also be used.” However, this does not suggest and clearly fails to anticipate the symbolic name of Applicants’ claim.

Additionally, in further regard to claim 31, Borella in view of Teodosiu fails to teach or suggest the first peer sending a symbolic name of an entity to the peer group name server, the peer group name server locating a copy of the symbolic name in the information about the one or more entities to determine an entity identifier associated with the symbolic name, and the peer group name server sending the entity identifier associated with the symbolic name to the first peer. Borella’s system only involves pairs of network devices, such as Borella’s edge routers 16 and 20, discovering each other. Borella’s system does not include a peer sending a symbolic name to a peer group name server. In fact, as noted above, Borella, even when combined with Teodosiu, fails to teach the use of symbolic names in his peer discovery protocol at all, despite the Examiner’s contention regarding a 1-byte unique number inserted in a TCP/IP packet. Borella does not mention anything regarding a peer group name server locating a copy of the symbolic name to determine an entity identifier associated with the symbolic name and sending the entity identifier associated with symbolic name to the first peer.

The Examiner cites figures 5, 6, 7, 8A, 8B and column 9, line 52 – column 10, line 3. The Examiner assert that Borella’s data packets (modified to include a peer discovery marker) are “sent to the corresponding networks from one peer for finding peer group, and the entity identifier will be extracted and stored in a peer discovery table on each peer network device who receives the packets.” The Examiner also concludes, “thus all the peer network device[s have] a copy of information for the peer group.” **The Examiner’s argument actually supports Applicants’ position.** In Borella’s system, individual edge routers exchange network address information directly, as argued by the Examiner. Thus, even in the Examiner’s interpretation, Borella’s system does not include a first peer sending a symbolic name of another entity to a peer group name server, the peer group name server locating a copy of the symbolic name to determine an entity identifier associated with the symbolic name, and the peer group name server sending the entity identifier to the first peer. As argued by the Examiner, peer

information is exchanged directly between Borella's edge routers, not via a symbolic name lookup by a peer group name server.

As discussed above, Borella in view of Teodosiu, fails to teach or suggest a first peer in the peer-to-peer network accessing a peer group name server in the peer-to-peer network, wherein the peer group name server comprises information about one or more entities in the peer-to-peer network, wherein the information comprises, for each of the one or more entities, a symbolic name and an associated entity identity of the entity. Borella in view of Teodosiu also fails to teach or suggest the first peer sending a symbolic name of an entity to the peer group name server, the peer group name server locating a copy of the symbolic name in the information about the one or more entities to determine an entity identifier associated with the symbolic name, and the peer group name server sending the entity identifier associated with the symbolic name to the first peer. Thus, the rejection of claim 31 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 58 and 70.

Further regarding claim 3, Borella in view of Teodosiu fails to teach or suggest wherein the information about the peer group includes a peer group name of the peer group and a peer group identifier of the peer group. The Examiner cites item 48 of FIG. 3A and column 6, lines 41-44 of Borella. However, the Examiner's cited passage does not mention anything about a peer group name or a peer group identifier. Borella teaches that a peer discover marker includes kind-field 48 that is "a unique number (e.g. 128)" (parenthesis in original). Borella, even if combined with Teodosiu, does not teach that the unique number in kind-field 48 is a peer group identifier. Instead, Borella teaches that kind-field 48 is used to identify the added header fields as a peer discovery marker (Borella, column 8, lines 27-36). Thus, kind-field 48 is used as part of the messaging protocol to identify Borella's inserted peer discovery marker and not as a peer group identifier, as suggested by the Examiner. Moreover, the kind-field 48, referred to by the Examiner, is part of Borella's peer discovery marker that is inserted in network messages. Borella's kind-field 48 is not part of information about a peer group stored on a peer group name server.

The Examiner does not rely on Teodosiu for the rejection of claim 3 and Teodosiu fails to teach or suggest, even if combined with Borella, where the information about the peer group includes a peer group name of the peer group and a peer group identifier of the peer group.

In the Response to Argument, the Examiner cites column 6, lines 51-60 and refers to Borella's storing of peer device information in a peer discovery table. The Examiner contends that in the information stored in the peer discovery table may include a peer device identifier and a peer group identifier. However, as noted above, Borella does not mention anything about peer group identifiers. The passages cited by the Examiner do not support the Examiner's contention that Borella teaches a peer group name. The Examiner has not cited any portion of Borella that teaches the use of a peer group name for any purposes whatsoever. Nor does Borella teach anything regarding information about a peer group stored on a peer group name server including a peer group name. Furthermore, the fact that Borella fails to make any mention whatsoever of any peer group name or peer group identifier, coupled with the Examiner's reliance modifying (Final Office Action, page 8, lines 13-17) the teaching of Borella to include such a peer group name, clearly demonstrates that Borella cannot anticipate (i.e. in a rejection based on 35 U.S.C. § 102) the specific limitations of claim 3.

Moreover, as discussed above regarding claims 1 and 31, the peer discovery table of an individual edge router in Borella's system cannot be considered information on a peer group name server.

Thus, the Examiner's combination of Borella and Teodosiu fails to teach or suggest the limitations of claim 3. The rejection of claim 3 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 12, 39 and 45.

Regarding claim 5, Borella in view of Teodosiu fails to teach or suggest wherein the information about each of the one or more member peers of the peer group includes a peer name of the particular peer and a peer identifier of the particular peer. The Examiner does not cite any portion of Borella that teaches where information about a member peer includes a peer name of the peer. Instead, Borella teaches that each peer devices stores only the addresses for discovered peers in a peer discovery table (FIG. 3B and column 6, lines 51-60). Borella, even if combined with Teodosiu, does not mention anything regarding information about each of one or more member peers stored on a peer group name server including a peer name of particular member peer.

The Examiner cites column 6, lines 51 – 60 and refers to Borella's storing of peer device information in a peer discovery table. The Examiner contends that in the information stored in the peer discovery table may include a peer name. However, as noted above, Borella does not mention anything about peer names. The passages cited by the Examiner do not support the Examiner's contention that Borella teaches a peer name. Furthermore, the fact that Borella fails to make any mention whatsoever of any peer name, coupled with the Examiner's reliance on modifying (Final Office Action, page 8, lines 13-17) the teaching of Borella to include such a peer name, clearly demonstrates that Borella cannot anticipate (i.e. in a rejection based on 35 U.S.C. § 102) the specific limitations of claim 5.

The Examiner does not rely on Teodosiu for the rejection of claim 5 and Teodosiu fails to teach or suggest, even if combined with Borella, where the information about each of the one or more member peers of the peer group includes a peer name of the particular peer and a peer identifier of the particular peer.

The Examiner's combination of Borella and Teodosiu fails to teach or suggest the limitations of claim 5. Thus, the rejection of claim 5 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 20, 41 and 49.

Regarding claim 8, Borella in view of Teodosiu does not teach or suggest the peer group name server receiving information about one or more other peer groups each comprising one or more member peers, wherein the information about the other peer groups stored on the peer group name server is accessible to the entities on the network through the peer group name server to discover one or more peer groups. As described above regarding the rejection of claim 1, Borella teaches a system and method for peer network device discovery but Borella, even when combined with Teodosiu, fails to teach that the information (i.e. the marker information) sent from one peer to another is accessible to entities on the network through the peer group name server to discover the peer group.

In contrast, Borella's edge routers only send out information about themselves, but do not make information received via Borella's peer discovery protocol regarding another device available to other devices. For example, in order to anticipate Applicant's claims, Borella's edge router 20 would have to make the address information regarding edge router 16 accessible to other entities on the network, which does not occur in Borella's system. In fact, Borella, even if combined with Teodosiu, fails to mention anything about a first peer network device providing discovery information about second peer network device available to a third peer network device. Thus, Borella in view of Teodosiu fails to teach or suggest a peer group name server receiving information about one or more other peer groups each comprising one or more member peers, wherein the information about the other peer groups stored on the peer group name server is accessible to the entities on the network through the peer group name server to discover one or more peer groups.

The Examiner cites figures 8A-B and column 7, line 37 – column 8, line 12 of Borella. However, the teaching of Borella on which the Examiner relies does not support the Examiner argument. As noted above, Borella's peer discovery protocol allows an edge router to include a peer discovery marker into a TCP message. Another edge router responds to the discovery marker with its network address and a network address of an associated host device. Thus, Borella's peer discovery protocol allows peer devices

(edge routers) to exchange network address directly. Borella's peer discovery protocol does not involve information about peer groups being received by a peer group name server and being accessible to entities on the network through the peer group name server to discover the peer group.

The Examiner does not rely on Teodosiu for the rejection of claim 8 and Teodosiu fails to teach or suggest, even if combined with Borella, where the information about the other peer groups stored on the peer group name server is accessible to the entities on the network through the peer group name server to discover one or more peer groups.

The Examiner's combination of Borella and Teodosiu fails to teach or suggest the limitations of claim 8. Thus the rejection of claim 8 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claim 43.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

Claims Objected To But Otherwise Allowable:

Claims 5, 20, 41 and 49 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-90001/RCK.

Respectfully submitted,

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